that the coincidence of the question with the very issue in the case is not *per se* a ground for exclusion. *Fenwick* v. *Bell,* 1 C. & K. 312; *Mansell* v. *Clements,* L. R. 9, C. P. 139; *Ryder* v. *State,* 100 Ga. 528; *Poole* v. *Dean,* 152 Mass. 589; *Donnelly* v. *R. Co.,* 70 Minn. 278; *Nebonne* v. *R. Co.,* 68 N. H. 296; *Littlejohn* v. *Shaw,* 159 N. Y. 188; *Western Coal & M. Co.* v. *Berberich,* 94 Fed. 329. See WIGMORE ON EVIDENCE, §1921.

LIEN—LOSS BY LIENOR'S ATTACHMENT.—The holder of a statutory lien for repairs on a motor boat in his possession sued out an attachment to enforce payment of the charges due. The sheriff levied on the property in pursuance of this process, lienor retaining physical possession of the boat and giving the officer a receipt for it. *Held,* that by causing an attachment to be levied on the property the lienor had waived his lien. *Fidelity and Deposit Co.* v. *Johnson* (1921), 275 Fed. 112.

A "lien is neither a jus ad rem nor a jus in re, but a simple right of retainer. The voluntary parting with possession of goods will amount to a waiver or surrender of the lien." *Sensenbrenner* v. *Mathews,* 48 Wis. 250. In England as early as 1828 it was held that the lienor himself, having called on the sheriff to sell his security, he set up no lien against the sale, and although the property never left his physical possession because he purchased it from the sheriff, he held possession by virtue of the sale and not by virtue of the lien. *Jacobs* v. *Latour,* 5 Bing. 130. In the United States, Massachusetts and Iowa have gone deepest into the subject. The Massachusetts view seems to be that the lienor loses his lien by surrendering to the attaching officer, unless he specifically reserves his lien. *Swett* v. *Brown,* 5 Pick. 178; *Townsend* v. *Newell,* 14 Pick. 332; *Legg* v. *Willard,* 17 Pick. 140; *Whitaker* v. *Sumner,* 20 Pick. 399; *Evans* v. *Warren,* 122 Mass. 303. Substantially the same view is taken by Iowa, although it does not appear that a lien may be reserved there through notice to the attaching officer. In reconciling the decisions in this state which hold that a statutory material man's lien is not lost through attachment, the court says in *Stein* v. *McAuley,* 147 Iowa 630: "If a lien depends upon possession and continued possession is essential to the lien, the party holding such lien cannot surrender his possession through an attachment and then assert his lien. *Citizen's Bank* v. *Dows,* 68 Iowa 460." *Contra* are *Arendale* v. *Morgan & Co.,* 5 Sneed. (Tenn.) 703; *Lambert* v. *Nicklass,* 45 W. Va. 527; *Jones et al.* v. *Ironton Garage Co.* 9 Ohio App. 431, which take the view that the lienor does not lose his lien even if it is of such a nature as to depend on possession. In the latter two important cases the court fails to recognize that under the facts legal possession passed out of the lienor by the attachment. The reasoning of the West Virginia court on this point is the more plausible, this tribunal assuming that the officer took possession as the lienor's agent, so that possession did not leave the lienor. But the broad contention that this agency exists is contrary to authority. The attaching officer is the agent of the plaintiff only if the writ served is void on its face; otherwise he is not the agent of the plaintiff, but the agent of the law. *Wilosn* v. *Tummon,* 1 D. & L. 513. Goods, when properly attached, are strictly in the custody

of the law and the creditor has no right of possession of the attached goods. *Missouri Pacific Ry. Co.* v. *Love,* 61 Kan. 433; *Dollins & Co.* v. *Lindsey & Co.,* 89 Ala. 217; *Stemmons & Hyatts* v. *King,* 8 B. Mon. (Ky.) 559. Though the lienor may hold physical possession of the goods, he may have it only as the agent of the officer. An attaching officer need not retain possession of the goods, but may deliver it to a keeper or agent, whose possession will be regarded as that of the officer. *Sinsheimer* v. *Whitely et al.,* 111 Cal. 378. But a lien is not lost through a delivery of possession with a special agreement not to prejudice the lien. *De Witt* v. *Prescott,* 51 Mich. 298; *Gregory* v. *Morris,* 96 U. S. 619. This holds good even in case of a sale. *Gregory* v. *Morris, supra.* Accordingly, if the lienor specifically reserves his lien when he surrenders possession to the officer there is no reason why he should lose it. The case of *Newell* v. *Sumner, supra,* can be explained as showing this phase of the principle as laid down in the supreme court decision of *Gregory* v. *Morris, supra.* But if there is no specific reservation of the lien there is little reason to imply one. In the West Virginia case, *supra,* in which this is done, the court stresses the point that an attachment is necessary to make the lien right of any practical value. But in this case the plaintiff reversed the proper order of procedure. Because of his lien, no one could take the property away from him without paying the lien charges, and so he was amply protected until he should take possession of it, after suit on the debt, by a judgment levy. Thus, in the principal case the lienor's action was premature if its sole purpose was to enforce lien rights practically.

SALES—MEANING OF THE WORD SALE.—The transfer of the assets of corporation A to a newly organized corporation B in return for stock in corporation B at 90 per cent of the face value, *held,* a "sale" within a contract entitling the manager to a certain per cent of the net profits on the *sale* of the company within a certain period. *Boardman Co.* v. *Petch* (Cal., 1921), 199 Pac. 1047.

Blackstone defines a sale as a transmutation of property from one man to another in consideration of some price or recompense in value. Bk. 2 BL. COM. 446. In construing statutes which use the word "sale," a strict interpretation is sometimes given, holding that the word "sale" imports a money consideration. So where a statute prohibited the "sale" of intoxicating liquors, giving liquor to one who returned other liquor of the same kind and amount did not constitute a sale. *Jones* v. *State,* 108 Miss. 530. Accord, exchange of oleomargarine, *Ewers* v. *Weaver,* 182 Fed. 713. But to constitute a sale in its broader sense, the consideration need not necessarily be money, for if title is transferred for a fixed money price, whether it be paid in cash or in goods, it is a sale. *Ullman* v. *Land,* 37 Tex. Civ. App. 422. In a popular sense, the word "sale" is often used in a still broader sense and includes those transactions where an exchange of goods is made without reckoning their value in terms of money. *Mosely* v. *Gordon,* 16 Ga. 384. The broad or narrow meaning of the word will be adopted in a given case as will best effectuate the intent of those using the word, and this intent may be indicated by the context or the surrounding circumstances